JUDGE STANTON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

08 CV 2358

Jonathan ZHUKOVSKY Plaintiff, v. Michael Mukasey, Attorney General of the United States of America; Michael Chertoff, Secretary of the Department of Homeland Security; Dr. Emilio T. Gonzalez, Director of the U.S. Citizenship and Immigration Services; Andrea Quarantillo, District District Director of the United States Citizenship and Immigration Services; Defendants.	Case Number: **Petition for Hearing on Naturalization Application Pursuant to 8 U.S.C. § 1447(b)** A045-172-750

MAR 06 2008
U.S.D.C. S.D. N.Y.
CASHIERS

COMPLAINT

Preliminary Statement

Plaintiff, by his attorney, complaining of Defendants alleges as follows:

1. On or about March 8, 2003, Plaintiff, Jonathan Zhukovsky, a lawful permanent resident of the United States of

America, applied to become a naturalized U.S. citizen. The process typically takes between six months to less than one year.

However, Defendants have frustrated Plaintiff's efforts to become a U.S. citizen by subjecting him to over one year of bureaucratic inaction and efforts, with no end in sight.

2. Plaintiff therefore brings this action requesting that this Court hear his application for naturalization, and after such hearing make a declaration that he is entitled to be naturalized, issue an order admitting him to citizenship, and grant him his attorney's fees and costs as provided by law.

Jurisdiction and Venue

3. This Court has jurisdiction of this action under 8 U.S.C. § 1447(b), as an application for a hearing on an unduly delayed application for naturalization, under 28 U.S.C. § 1331, as an action arising under the Constitution and the laws of the United States, and under 5 U.S.C. § 701 as an action to review agency action.

4. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(e) and under 8 U.S.C. § 1447(b), as Petitioner resides within the jurisdiction of this Court.

Parties

5. Plaintiff is an adult national of the Republic of Azerbaijan, and a resident of New York, New York.

6. Defendant Michael Mukasey is the Attorney General of the United States of America and is sued herein in his official capacity only. Defendant has the "sole authority to naturalize persons as citizens of the United States," pursuant to 8 U.S.C. § 1421.

7. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security, and is sued herein in his official capacity only. Defendant has the ultimate responsibility and authority over immigration.

8. Dr. Emilio T. Gonzalez, the Defendant herein, is the Director of the U.S. Citizenship and Immigration Services, and is sued herein in his official capacity. U.S. Citizenship and Immigration Services(USCIS) is an agency within the Department of Homeland Security, and is charged with administering and enforcing the laws related to immigration and naturalization of aliens, pursuant to 8 U.S.C. § 1103(a).

9. Andrea Quarantillo, the Defendant herein, is the New York District Director of USCIS and is sued herein in her official capacity only. Defendant is responsible for the grant or denial of naturalization applications filed within USCIS New

York district office, pursuant to 8 U.S.C. § 1421, 8 U.S.C. § 1427, 8 U.S.C. § 103.1(g)(2)(ii), 8 CFR § 310.2 and 8 CFR § 316.3.

Facts

10. Plaintiff Jonathan Zhukovsky was born on December 17, 1974 in the Republic of Azerbaijan and became a lawful permanent resident of the United States on July 20, 1995. (Exhibit 1, Copy of Permanent Resident Card)

11. On or about March 8, 2003, Plaintiff filed Form N-400, Application for Naturalization, with the USCIS District Office.

12. On or about March 9, 2004, in connection with Plaintiff's naturalization application, the Defendant and/or his designated agent conducted an examination on Plaintiff's application for naturalization. (Exhibit 2, N-652, Notice).

13. On or about March 9, 2004, the Plaintiff was provided by the Defendant and/or his designated agent with Form N-14, with a request that a "Marriage Certificate certified copy of original" be returned by "4/9/04". (Exhibit 3, N-14, Notice).

14. Plaintiff alleges that he satisfies all of the requirements for naturalization pursuant to 8 U.S.C § 1427 and 8 U.S.C § 1423.

15. At the time of filing the application for naturalization, Plaintiff (a) had attained 18 years of age, (b)

remained a lawful permanent resident of the United States; (c) maintained a continuous residence in the United States for at least five years; (d) was a resident of the state of New York for a minimum period of three months; (e) was physically present in the United States for a minimum period (at least half the period of required continuous residence); (f) had continuous residence in the U.S. from the date of filing the naturalization application; (g) was and continues to be attached to the principles of the U.S. Constitution; and (h) had good moral character for the requisite five years prior to filing the naturalization application.

16. At his March 9, 2004 examination, Plaintiff passed all portions of the requirements for naturalization, and was told to follow the instructions on Form N-14, and that a decision could not get be made on his application. (Exhibit 2, Naturalization Interview Results).

17. After failing to hear from Defendants on the progress of his naturalization application, Plaintiff made inquiries about the status of Plaintiff's application. (Exhibit 4, USDOJ/INS letter dated November 1, 2004 acknowledging receipt of Plaintiff's inquiry).

18. Plaintiff hired current Counsel to inquire about the status of Plaintiff's naturalization application.

19. Plaintiff's Counsel's INFOPASS inquiry on September 4, 2007 led to a new fingerprint appointment. (Exhibit 5, INFOPASS appointment letter copy; Exhibit 6, Fingerprint Appointment, September 5, 2007).

20. On or about September 4, 2007, the Defendant hand-delivered to Plaintiff's Counsel a letter acknowledging the inquiry which stated that the application was "pending receipt of security checks." (Exhibit 7, USCIS letter dated September 4, 2007).

21. Plaintiff waited patiently for Defendants to process his application for naturalization, but Defendants took no action.

22. More than 120 days have passed since the initial examination, and Defendants have failed to make a determination under 8 U.S.C. § 1446 on Plaintiff's eligibility for naturalization. Therefore, Plaintiff is entitled to ask this Court to hear his application for naturalization pursuant to 8 U.S.C. § 1447(b).

23. Therefore, Plaintiff requests that this Court grant him a hearing on his Application for Naturalization in accordance with 8 U.S.C. § 1447(b). While this Court has the option under the cited statute to remand this matter to USCIS, Plaintiff respectfully requests that the Court hear the matter itself.

Cause of Action

24. By failing to timely process and complete Plaintiff's Application for Naturalization, Defendants have adversely affected and aggrieved Plaintiff under 5 U.S.C. § 702, for which relief is provided under 5 U.S.C. § 706 and 8 U.S.C. § 1447(b).

Prayer for Relief

Therefore, Plaintiff requests this Honorable Court do the following:

a. schedule a hearing on Plaintiff's application for naturalization;

b. following said hearing, enter findings of fact and conclusion of law that Plaintiff is qualified for naturalization and enter an order admitting Plaintiff to citizenship;

c. order Defendants to issue Plaintiff a Certificate of Naturalization at the next available opportunity, but in no event later than 30 days after this Court's final order disposing of this matter;

d. grant Plaintiff a reasonable attorney's fees and his costs and expenses herein pursuant to 28 U.S.C. § 2412;

e. grant Plaintiff any and all additional relief to which he may appear to be entitled; and

f. grant such further relief as may be just, lawful, and equitable in the premises.

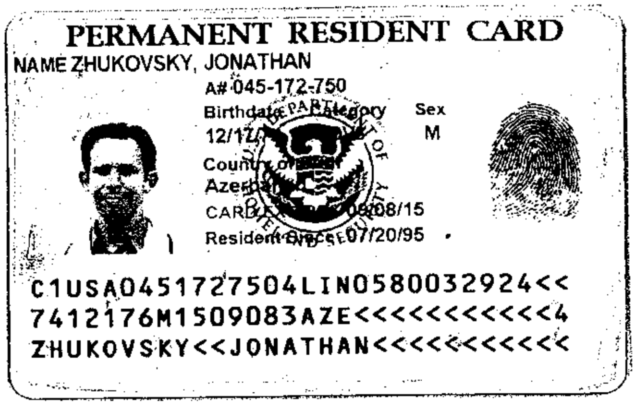
g. In the alternative, Plaintiff prays this Honorable Court to compel the Defendant to make a decision on Plaintiff's application for naturalization, pursuant to a writ of mandamus, 28 U.S.C. § 1361, 28 U.S.C. § 1331.

Respectfully submitted,

Dated: 2/29/08

James A. O'Malley
Attorney for Plaintiff
State Bar No. 2129377
Admitted to Southern District NY 03/1988
JAO'M 8099
James A. O'Malley, P.C.
299 Broadway, Suite 1005
New York, NY 10007
Phone: (212) 619-8387
Fax: (212)406-2967

Exhibit 1, Copy of Permanent Resident Card


PERMANENT RESIDENT CARD

NAME ZHUKOVSKY, JONATHAN

A# 045-172-750

Birthdate Category Sex

12/17 M

Country of

Azerbai

CARD EXPIRES 09/08/15

Resident Since 07/20/95

C1USA0451727504LIN0580032924<<

7412176M1509083AZE<<<<<<<<<<<<4

ZHUKOVSKY<<JONATHAN<<<<<<<<<<<<

Exhibit 2, N-652 Notice

A#: 045172750

On 3/9/04, you were interviewed by INS Officer Brockington

- [x] You passed the test of English and U.S. history and government.
- [ ] You passed the test of U.S.history and government and the English language requirement was waived.
- [ ] The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/ or a knowledge of U.S.histry and government.

- [ ] You will be given another opportunity to be tested on your ability to ______ speak/ ______ read/ ______/ write English.
- [ ] You will be given another opportunity to be tested on your knowledge of U.S. history and government.

- [x] Please follow the instructions on the Form N-14.
- [ ] INS will send you a written decision about your application.

- [ ] You did not pass the second and final test of your ______ English ability/ ______ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) ______ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established yor eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) __X__ A decision cannot yet be made about your application.

It is very important that you:

- ✓ **Notify INS if you change your address.**
- ✓ **Come to any scheduled interview.**
- ✓ **Submit all requested documents.**
- ✓ **Send any questions about this application in writing to the oficer named above. Include your full**
- ✓ **name, A-number, and a copy of this paper.**
- ✓ **Go to any oath ceremony that you are scheduled to attend.**
- ✓ **Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath**
- ✓ **ceremony. Include a copy of this paper and a copy of the scheduling notice.**

Exhibit 3, N-14, Notice

Immigration and Naturalization Service

United States Citizenship and Immigration Ser. **File No.:** 045172750
26 Federal Plaza, Rm 700 7th FL **Date:** 3/9/04
New York, NY 10278 **Officer:** L. Brockington

Examination of your application (N400) shows that additional information, documents or forms are needed before your application can be acted upon. Please *RETURN THIS LETTER WITH REQUESTED INFORMATION and/or DOCUMENTS by:*

Jonathan zhukovsky 4/9/04

Failure to do so may result in the denial of your application.

- ___ BANK LETTER OR STATEMENT SHOWING JOINT BANK ACCOUNT FOR YEARS:______
- ___ CANCELED CHECKS SHOWING JOINT BANK ACCOUNT
- ___ CREDIT CARD STATEMENTS
- ___ UTILITY BILLS (GAS, ELECTRIC, TELEPHONE, CABLE TV)
- ___ INSURANCE POLICY INDICATING SPOUSE AS BENEFICIARY
- ___ HEALTH INSURANCE POLICY SHOWING COVERAGE OF SPOUSE
- ___ LEASE AGREEMENT, MORTGAGE, OR DEED SHOWING JOINT OWNERSHIP
- X MARRIAGE CERTIFICATE Certified Copy of original
- ___ DIVORCE DECREE
- ___ BIRTH CERTIFICATE
- ___ BIRTH CERTIFICATE OF CHILD(REN)
- ___ SPOUSE'S NATURALIZATION CERTIFICATE
- ___ SPOUSE'S BIRTH CERTIFICATE
- ___ SPOUSE'S DEATH CERTIFICATE
- ___ PASSPORT
- ___ ALL DISPOSITIONS OF ARREST, ORIGINAL WITH RAISED SEAL FROM COURT
- ___ LETTER FROM WELFARE INDICATING HOW LONG YOU HAVE BEEN COLLECTING BENEFITS
- ___ LETTER FROM SOCIAL SECURITY (26 FEDERAL PLAZA, 31ST FLOOR) INDICATING HOW LONG YOU HAVE BEEN COLLECTING SOCIAL SECURITY OR SSI
- ___ 1040 TAX RETURNS WITH COPIES OF W-2 FORMS FOR THE FOLLOWING YEARS:______
- ___ 1040 TAX RETURNS FROM THE PERSON WHO SUPPORTED YOU WITH YOU LISTED AS A DEPENDENT ON THE 1040 FORM FOR THE FOLLOWING YEARS:______
- ___ I-1722 FROM I.R.S. (290 BROADWAY, 5TH FLOOR) FOR THE FOLLOWING YEARS:______
- ___ SELECTIVE SERVICE REGISTRATION NUMBER AND THE DATE REGISTERED FOR SELECTIVE SERVICE (847) 688-6888
- ___ AFFIDAVIT INDICATING WHY YOU DID NOT REGISTER FOR SELECTIVE SERVICE
- ___ PROOF OF CHILD SUPPORT IN FORM OF: CHILD SUPPORT PAYMENTS, TAX RETURNS, LETTER FROM COURT
- ___ PROOF OF SCHOOL ATTENDANCE IN FORM OF: STUDENT ID, GRADE REPORT, CLASS SCHEDULE, PROOF OF FINANCIAL AID

Form N-14 (Rev. 9/16/97)

26 JSN

Exhibit 4, USDOJ/INS letter dated November 1,2004

U.S. Department of Justice

Immigration and Naturalization Service

A# 45172750

26 Federal Plaza
New York, NY 10278

Mr. Jonathan Zhukovsky
562 West end Avenue # 12B
New York, NY 10024

Date: November 01, 2004

Dear: Mr. Zhukovsky

This will acknowledge receipt of your inquiry dated November 01, 2004 regarding the status of your application for naturalization.

Please be advised that your application is pending receipt for security checks. Upon receipt of all security checks, a decision will be made on your application for naturalization.

We hope the information provided is helpful. Thank you for your patience and cooperation in this matter.

Sincerely,

Mary Vincent
Immigration Information Officer
Naturalization Section
New York District

Exhibit 5, INFOPASS appointment letter copy

INFOPASS
Your e-Ticket to Immigration Information.

Name:	Jonathan Zhukovsky
Appointment Type:	Question about case
Confirmation No.:	NYC-07-95948 — Authentication Code: 2f37
Appointment Date:	September 4, 2007
Appointment Time:	7:15 AM
Location:	26 FEDERAL PLAZA, New York, NY 10278; Lobby 1-102

This is your Confirmation Number: *NYC-07-95948*

If you wish to cancel this appointment, you will need the following Personal Identification Number:
81706

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order that we may serve you more efficiently, we recommend that you bring all applicable immigration forms, letters, receipts and supporting documents. If translations are used, they should be certified. Please bring the original documents as well.**

Exhibit 6, Fingerprint Appointment, September 5, 2007

U.S. Citizenship and Immigration Services

Department of Homeland Security

Fingerprint Notification

Jonathan Zhukovsky
562 West End Ave # 12B
New York, N.Y. 10024

Date: 9/4/2007
A Number: A045 172 750
D.O.B. 12/17/1974

Dear Applicant:

To continue processing your N-400 application, INS must send your fingerprints to the Federal Bureau of Investigation. If you were between the ages of 14 and 75 at the time of filing, you must have your fingerprints taken at an INS Application Support Center (ASC

Address		Hours of Operation	
United States Citizenship and Immigration Services		Saturday & Sunday	Closed
201 Varick Street - 10th Floor			
New York, NY 10014		Monday - Friday	8am - 1pm
		Also closed on Federal Holidays	

You are scheduled to be fingerprinted on SEPT. 5, 2007

[redacted] **you do not have your fingerprints taken within that period, your application or petition may be considered abandoned and denied.** Please do not appear before your scheduled date.

When you go to have your fingerprints taken, you must bring:

1) **This letter and**
2) **Your Alien Registration Card (ARC).** If you do not have your ARC, you must bring alternative photo identification **such as passport, valid driver's license, national ID, State-issued photo ID, or other INS-issued photo ID.**

Please be reminded that you must bring this letter and proper photo identification mentioned above to have your fingerprints taken, without them the INS ASC will not take your fingerprints. This will delay in the processing of your application.

Please inform the office listed below immediately of any address change

U.S. Citizenship & Immigration Services
26 Federal Plaza / 7th Floor
New York, NY 10278
Natz. Section

BIOMETRICS PROCESSING STAMP
ASC SITE CODE: ____________
BIOMETRICS QA REVIEW BY:
____________ ON ____________
TENPRINTS QA REVIEW BY:
[signature] ON 9/5/07

Exhibit 7, USCIS letter dated September 4, 2007

Department of Homeland Security
Citizenship and Immigration Services

A045172750

26 Federal Plaza
New York, NY 10278

September 4, 2007

Hand Delivered
Jonattan Zhukovsky

Dear Applicant:

This will acknowledge receipt of your inquiry dated September 4, 2007 regarding the status of your application for naturalization.

Please be advised that your application is pending receipt for security checks. Upon receipt of all security checks, a decision will be made on your application for naturalization.

We hope the information provided is helpful. Thank you for your patience and cooperation in this matter.

Sincerely,

L. Quinones

L. Quinones
Immigration Information Officer
Naturalization Section
New York District